

June 16, 2017

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Written Ex Parte Presentation; WC Docket Nos. 09-197, 10-90, 11-42**

Dear Ms. Dortch:

The undersigned Lifeline eligible telecommunications carriers (ETCs) hereby propose an industry consensus plan to govern the migration of subscribers to the Lifeline National Verifier.<sup>1</sup> As described below, subscribers should be migrated if their income or program based eligibility can be confirmed by the National Verifier via an appropriate database. ETCs can confirm the income or program based eligibility of subscribers not found in such databases either by providing previously obtained documentation (for end users enrolled after February 17, 2016) or evidence of a successful annual recertification (for end users enrolled prior to February 17, 2016). We believe this process balances the need for accuracy in eligibility determinations with the effort and confusion associated with collecting and submitting proof of eligibility.

## **Background**

On a May 17, 2017 Lifeline Program Update industry webinar, USAC announced its intention to require Lifeline subscribers to re-verify their eligibility for Lifeline when they are migrated to the National Verifier. USAC will first check for the subscriber in any available eligibility databases. Where there are no databases and for those subscribers that are not found in the available databases (state eligibility databases usually only include some of the programs that qualify a low-income consumer for Lifeline), USAC will look to ETCs to provide proof of income or program based eligibility. ETCs were required to retain records of subscribers' proof of eligibility starting in February 2016.<sup>2</sup> However, USAC's current plan is to require that re-proof of eligibility be collected after **July 2017**, even if the ETC has retained a record of the subscriber's proof of eligibility from prior to July 2017.

---

<sup>1</sup> This industry consensus plan is consistent with the proposal submitted by TracFone Wireless. See *Ex Parte* Presentation of TracFone Wireless, Inc., WC Docket Nos. 09-197, 10-90, 11-42 (June 12, 2017).

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, ¶¶ 224-237 (2015).

Marlene Dortch

June 16, 2017

Page Two

**Requiring Lifeline Subscribers to Re-Prove Income or Program Based Eligibility is Contrary to Commission Rules and Orders, and Will Be Burdensome and Confusing**

Section 54.410 of the Commission's rules governs the collection of proof of eligibility from Lifeline applicants and annual recertification of eligibility. Since 2012, sections 54.410(b) and (c) have required that Lifeline applicants provide proof of income or program based eligibility for Lifeline to enroll.<sup>3</sup> Section 54.410(f) governs annual recertification and requires that all Lifeline subscribers be recertified annually by checking available eligibility databases or obtaining a signed certification that meets the certification requirements of section 54.410(d) (**not** (b) or (c)).<sup>4</sup> In the 2012 Lifeline Reform Order, the Commission reasoned, "Because consumers in states without eligibility databases will be required to provide documentation at enrollment to establish program eligibility, we find a requirement that ETCs or program administrators, where applicable, verify all Lifeline subscribers' documentation on an annual basis to be unnecessary."<sup>5</sup> The Commission further determined,

We also do not believe that the recertification process we adopt today will be overly burdensome to consumers. As noted above, the amendment to section 54.410 will permit consumers to annually re-certify to their continued eligibility for Lifeline without requiring associated documentation...we expect that elimination of the requirement that consumers annually provide supporting eligibility documentation will enable consumers to more easily respond to verification surveys, thereby reducing the number of Lifeline subscribers de-enrolled for failure to respond to carrier verification efforts.<sup>6</sup>

Nothing in the 2016 Lifeline Modernization Order changed these determinations in section 54.410 of the Commission's rules or the 2012 Lifeline Reform Order, nor directed the Bureau or USAC, or gave either the authority, to require Lifeline subscribers to re-prove their eligibility to be migrated into the National Verifier.<sup>7</sup> Instead, although the 2016 Lifeline Modernization Order

---

<sup>3</sup> See 47 C.F.R. §§ 54.410(b),(c).

<sup>4</sup> See 47 C.F.R. § 54.410(f).

<sup>5</sup> See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report And Order and Further Notice Of Proposed Rulemaking, FCC 12-11, ¶ 134 (2012) (2012 Lifeline Reform Order).

<sup>6</sup> 2012 Lifeline Reform Order ¶ 139.

<sup>7</sup> The 2016 Lifeline Modernization Order gave the Bureau authority to provide needed clarifications or interpretations of Commission orders for unforeseen circumstances, but Lifeline

Marlene Dortch

June 16, 2017

Page Three

required the transition to the National Verifier, it specifically stated that “current Lifeline program rules regarding record retention of eligibility documentation will remain in effect for Lifeline providers who have determined the eligibility of a current subscriber when enrolling that subscriber, as this is necessary for Lifeline program evaluations and audits.”<sup>8</sup> Lifeline eligibility for current subscribers and those enrolled prior to implementation of the National Verifier remained unchanged.

USAC’s proposal is burdensome and confusing for Lifeline subscribers, and is very likely to result in the de-enrollment of many subscribers, not because they are ineligible, but because they did not send in the requisite documentation. Past experience has shown that a significant proportion of Lifeline customers do not respond to requests for action which will help to ensure their on-going participation in the Lifeline program, because of the effort involved, because of the confusion over why such response is necessary, or because of other stresses in their lives. It would be contrary to the public interest to de-enroll such subscribers when a simpler and more effective process for demonstrating eligibility can be implemented.

**Lifeline Subscriber Eligibility Can be Confirmed for National Verifier Migration Consistent with Records Retained by ETCs and Current Audit Standards Without Imposing an Unreasonable Burden on Subscribers**

Millions of Lifeline subscribers are currently receiving critical Lifeline service pursuant to proof of income or program based eligibility provided to ETCs weeks, months or years ago and pursuant to annual recertifications of eligibility made under penalty of perjury in full compliance with Commission rules. This documentation would be entirely sufficient in the case of an audit. If USAC were to audit the eligibility of these subscribers today, it would request proof of income or program based eligibility for subscribers enrolled since February 2016 (when ETCs began retaining such proof) and recertification forms for those enrolled prior to February 2016 to confirm continued eligibility. It would not require ETCs to contact subscribers and request that they find a way to re-prove eligibility by sending copies of Medicaid and SNAP cards or tax returns to the ETC or to USAC. The reason that USAC does not ask ETCs to obtain new proof of income is because that is not what is required under the Commission’s Lifeline rules.

---

subscriber migration is not an unforeseen circumstance and there is nothing unclear about the Commission’s rules or orders in need of clarification. *See* 2016 Lifeline Modernization Order ¶ 158.

<sup>8</sup> 2016 Lifeline Modernization Order ¶ 151.

Marlene Dortch

June 16, 2017

Page Four

Migration of Lifeline subscribers to the National Verifier must follow the same eligibility principles, consistent with the Commission's enrollment and recertification rules. As USAC migrates subscribers in a state to the National Verifier, it should first check any available state eligibility databases. If the subscriber is found, he or she should be migrated. If the subscriber is not found, USAC should request income or program based eligibility documentation from the ETC. If the subscriber was enrolled on or after February 17, 2016, the ETC should provide a copy of the subscriber's proof of eligibility. If the subscriber was enrolled before February 17, 2016, the ETC should provide proof of the subscriber's most recent annual recertification. This process is consistent with Commission rules and orders and would not overly burden Lifeline subscribers.

The undersigned are committed to ensuring that only eligible end users receive the Lifeline benefit, and to the smooth implementation of a National Verifier. We believe that the industry plan described above will promote both of these outcomes, more efficiently and at lower cost (both human and financial) than the proposal set forth by USAC. Accordingly, we urge the Commission to adopt this industry proposal.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann

Joshua Guyan

Kelley Drye & Warren LLP

3050 K Street, NW, Suite 400

Washington, DC 20007

(202) 342-8400

*Counsel to the Lifeline Connects Coalition and  
Boomerang Wireless, LLC d/b/a enTouch  
Wireless*

Marlene Dortch  
June 16, 2017  
Page Five

/s/ Danielle Frappier  
Danielle Frappier  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, NW, Suite 800  
Washington, DC 20006-3401

*Counsel to True Wireless, LLC and TerraCom,  
Inc. and YourTel America, Inc.*

/s/ Norina Moy  
Norina Moy  
Sprint  
Director, Government Affairs  
700 9<sup>th</sup> St. NW, Suite 700  
Washington, DC 20001  
703-433-4503

/s/ Nathan Johnson  
Nathan Johnson  
CEO  
TruConnect Communications, Inc.  
1149 South Hill Street  
Los Angeles, CA 90015

cc: Jodie Griffin  
Allison Jones  
Trent Harkrader  
Dana Zelman